

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.625 of 2000.
Judgment reserved on: 25.9.2007
Date of decision: September 26th, 2007.

State of Himachal Pradesh. Appellant.

Vs.

Ved Parkash. Respondent.

Coram

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting?

For the Appellant: Mr.S.D. Vasudeva, Addl. Advocate General.

For the Respondent: Mr. Rajesh Raghuwanshi, Advocate.

Surinder Singh, J :

The respondent was charge-sheeted for the offence under Sections 279 and 427 of the Indian Penal Code read with Sections 181 and 184 of the Motor Vehicles Act. After the complete trial, he was acquitted by the learned Chief Judicial Magistrate.

The State has felt aggrieved and dissatisfied by the impugned judgment of acquittal, as such, assailed it on law and facts by way of filing the instant appeal.

Precisely, the case of the prosecution is that on 20.4.1998, at about 2 P.M, a truck No.HIB-1105 was being allegedly driven by respondent rashly and negligently. When it reached, at village Nihal at about 2 p.m., a lady and two children were waiting for the bus. They had a narrow escape by the negligent act of the respondent, but the truck had hit a scooter parked on the road and then dashed against a Khokha of the complainant and finally with the tree. The complainant alleged the loss of his property to the tune of

Whether reporters of local Papers may be allowed to see the judgment? Yes

Rs.5,000/-. The respondent is alleged to have consumed the liquor. Said driver along with his cleaner fled away from the place. The complainant got recorded his statement Ext.PA under Section 154 of the Code of Criminal Procedure. The police investigated the case, took into possession the truck along with documents, recorded the statements of the witnesses and also took the photographs Exts.PW2/A to E. The truck was got mechanically examined by PW3. There was no defect in the truck. After completing the investigation, challan was presented in the court, against the respondent under the aforesaid sections.

The respondent pleaded not guilty and claimed trial to the charges leveled against him. The prosecution examined complainant Sudesh Kumar (PW1), Prem Lal Photographer (PW2), Constable Lekh Raj (PW3), S.I. Desh Raj (PW4), Roshan Lal, owner of the shooter as (PW5). After appreciating the evidence on record, the learned trial court did not believe the case of the prosecution, consequently, acquitted the accused, on the ground that the photographs of the accident depicts the different view than as stated by the complainant, with respect to the accident. The rash and negligent driving as alleged by the complainant is not made out. The complainant did not disclose in his statement Ext.PA, recorded under Section 154 of the Code of Criminal Procedure that the respondent was drunk at that time, whereas, his case was that after the accident and smashing the khokha and the scooter struck against the tree, the respondent fled away from the spot and then how the complainant came to know that he was drunk.

I have reappraised the evidence on record. There is no evidence that the respondent was drunk at the relevant time and that he was driving the truck in a manner so as to cause breach of

Section 181 and 184 of the Motor Vehicles Act. Even to attributing the criminal liability upon the respondent for the offence under Sections 279 and 427 of the Indian Penal Code, there is no cogent evidence worth inspiring confidence. Ext.PW4/B (site plan) shows that the truck after the accident had fallen down from the road into bushes. If this fact is seen in the light of the photograph Ext.PW4/B, alleged to have taken by PW2 after the accident, the back portion of the truck is on the road. The other photographs Exts.PW2/D and E show altogether different position which is irreconcilable. Further photographs did not show that the truck had over turned, whereas, the site plan prepared by the Investigating Officer on the same day shows that after the accident the truck had over turned. The next regrettable feature of the case is that the respondent has alleged the cause of accident to the failure of the breaks. Police Mechanic did not check the brakes by driving the truck nor he had stated that the brakes could be checked by its pressure alone. According to him, he examined both the vehicles i.e. scooter as well as truck in question but did not find any defect during its examination, but his report does not show if the scooter was also examined by him. Further, the scooter was stated to have been hit by the truck at the curve at point 'B'. The place of scooter has not been pin pointed in the site plan, nor there are any photographs of the scooter to show its position on the road. To lend strength to the case of the prosecution, neither the lady who was alleged to have been present on the spot was enquired by the police with respect to the cause of the accident, nor produced in the court. The incident aforesaid appears to be a pure accident. Though the respondent was required to explain that due care and caution to avoid the accident was taken but he did not do so in his statement under Section 313 of the Code of Criminal Procedure, yet looking to the trend of cross-

examination, the accident in question is attributed to the failure of the brakes which were not properly examined nor the mechanic gave proper explanation regarding its examination

Thus for the aforesaid reasons, the prosecution case does not inspire confidence to sustain the conviction of the respondent for the offences charged. Accordingly, the appeal is dismissed.

The bail bonds of the respondent, entered upon at any stage during the proceedings of this case stand discharged. The matter is disposed of accordingly.

September 26th , 2007.
(PDS)

(Surinder Singh)
Judge.